IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.683 of 2000

Reserved on 21.5.2007

Date of decision 25.6.2007

Jeevnu Ram Petitioner

Vs.

Union of India and another Respondents

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the Petitioner: Ms. Vandana Kuthiala, Advocate.

For the Respondents : Mr.Sandeep Sharma, Assistant Solicitor General of India, for respondent No.1.

Mr.M.S.Chandel, Advocate General, with Mr.M.A.Khan and Ms.Meenakshi Sharma, Dy.A.Gs. for respondent No.2.

Rajiv Sharma,J.

The brief facts which can be culled out from the pleadings of the parties are that the petitioner had participated in Praja Mandal Movement. He was arrested at the instance of Raja of Suket and was detained for three months in Sundernagar jail. He had to remain underground from October,1947 to January, 1947 in order to evade arrest.

The Government of India had promulgated a Scheme known as "Freedom Fighter's Pension Scheme, 1972." He submitted an application to the Government of India in the year 1974 which was rejected on 31.3.1974. The Freedom Fighter's Pension Scheme was further liberalised in the year 1980 and renamed as "Swatantarta Sainik Samman

[1] Whether reporter of local papers are allowed to see the judgment ? No.

Pension Scheme, 1980" He again applied to the Government of India for the grant of freedom fighter pension after being declared as freedom fighter by the State of Himachal Pradesh. He had annexed all the requisite certificates with his application, including certificate issued by Sh.Rattan Singh, Ex M.L.A. dated 22.8.1974. Sh.Rattan Singh had undergone imprisonment for two years and had been declared to be freedom fighter by respondent No.1. He had also annexed certificate dated 5.6.1985 issued by one Sh.Sant Ram Gupta, freedom fighter. It has come in the pleadings that on the basis of certificates issued by Sh.Rattan Singh, S"Sh.Dila Ram ,Bhagat Ram and Sh.Deermal had been granted freedom fighter's pension.

Ms.Vandana Kuthiala, learned counsel on behalf of the petitioner had argued that till date no decision has been conveyed to her client after he had submitted application to Respondent No.1 after being declared as freedom fighter by the State of Himachal Pradesh on 31.8.1989. Mr.Sandeep Sharma, learned Assistant Solicitor General of India, on behalf of respondent No.1 had argued that the case of the petitioner is not covered under the scheme.

I have heard the learned counsel for the parties and have also gone through the record.

The petitioner had suffered imprisonment for three months as is evident from Annexure PA. He had to remain underground with effect from October, 1947 to January, 1948. He had been recognized as freedom fighter by the State of Himachal Pradesh on 31.8.1989. The petitioner had submitted applications along with certificates issued by Sh.Rattan Singh, Ex M.L.A. dated 22.8.1974 and certificate dated 5.6.1985 issued by Sh.Sant Ram. The respondents have not denied in their reply the contents of para 8 of the petition, stating therein that the petitioner had submitted application for the release of freedom fighter pension scheme

after being declared as freedom fighter by the state of Himachal Pradesh. The respondents were bound to consider the case of the petitioner in view of the certificates issued as mentioned above as well as on the basis of his being declare freedom fighter by the State of Himachal Pradesh on 31.8.1989. The petitioner had given the names of three freedom fighters, who were granted pension merely only on the basis of the certificates issued by Sh.Rattan Singh. These averments have also not been denied by the respondents in their reply. What has been stated in para 14 of the reply is that the case of the petitioner was rejected on 6.4.1983. The respondents were required to take a decision on the basis of subsequent development i.e. he being declared a freedom fighter by the State of Himachal Pradesh.

The Division Bench of this Court has held in **Shri Budhi Sagar Nautiyal v. Union of India and another**, 1993 (2) Sim.L.C.339 that in case a person has suffered jail imprisonment and was also externed, the period of jail suffering as also period of externment deserve to be clubbed together in similar terms as in the case of broken periods of imprisonment to be totalled up for computing the qualifying period of jail suffering". In the present case the petitioner had suffered imprisonment for three months and thereafter remained underground with effect from October, 1947 to January, 1948. In view of the law laid down by this Court in Sh.Budhi Sagar Nautiyal's case (supra) the period suffered by the petitioner and the period when he remained underground is to be clubbed together for determining the eligibility.

The upshot of the above discussion is that the respondents till date have not taken any decision on the application preferred by the petitioner after being declared as freedom fighter by the State of Himachal Pradesh. The respondents were bound to take into consideration the certificates issued by Sh.Rattan Singh and Sh.Sant Ram. Similarly situate freedom

fighters have been granted pension on the basis of the certificates issued by Sh.Rattan Singh.

Accordingly this writ petition is allowed. The respondents are directed to consider the case of the petitioner for release of pension in view of the observations made hereinabove within a period of eight weeks from today.

June 25,2007(g) **(Rajiv Sharma), J.**